

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 MATTHEW SPONER, )  
4 Plaintiff, ) No. 3:17-cv-02035-HZ  
5 vs. ) September 3, 2019  
6 EQUIFAX INFORMATION SERVICES, ) Portland, Oregon  
7 LLC and WELLS FARGO BANK, N.A., )  
8 Defendants. )  
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14 **TRIAL - DAY 5**

15 TRANSCRIPT OF PROCEEDINGS

16 BEFORE THE HONORABLE MARCO A. HERNANDEZ

17 UNITED STATES DISTRICT COURT JUDGE  
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## APPEARANCES

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1 P R O C E E D I N G S

2 (The Court, counsel, and the parties reconvene.)

3 THE COURT: Be seated.

4 So we have another question. It reads as follows:

5 "Was 560, 509, and 510 viewed in pretrial discovery?"

6 Submitted by Rayna Flye and other jurors.

7 I'll read it to you again: "Was No. 560, 509, and  
8 510 viewed in pretrial discovery?"

9 My proposed response: "I cannot answer this  
10 question. Pretrial discovery is not relevant to your  
11 determination."

12 MR. PETERSON: Fine with defendant, Your Honor.

13 MR. SOLA: No objection, Your Honor.

14 THE COURT: Okay.

15 Here you go, Jen.

16 Thank you.

17 MR. PETERSON: Thank you.

18 MR. SABIDO: Thank you.

19 (A recess is then taken.)

20 (The Court, counsel, and the parties reconvene.)

21 THE COURT: Be seated.

22 Three questions. First one is: "Do we have access  
23 to William J. Brady deposition?"

24 Second one is: "Do we have access to William J.  
25 Brady transcript of deposition?"

1           And third question is: "Do we have access to Brian  
2 Funsch deposition and/or transcript of deposition?"

3           And it's signed by -- I don't know who. I can't read  
4 the writing. It looks like Walsh or Welsh.

5           THE CLERK: Kristin Walrod.

6           THE COURT: Generally, I think that these depositions  
7 are like anybody else's testimony and they don't go back to  
8 the jury. They're just like anybody else's testimony. But if  
9 the parties want to confer and agree to send them back, I'll  
10 send them back.

11           And I don't know the rule off the top of my head. I  
12 was busy doing other things.

13           I'll hear from the plaintiff first.

14           MR. SOLA: Yes, Your Honor. We think they should be  
15 able to see these depositions.

16           MR. PETERSON: Can we have a minute?

17           THE COURT: Yeah.

18           (Defense counsel confer off the record.)

19           MR. PETERSON: Your Honor, our inclination is to  
20 oppose the request to have the videos sent back.

21           I agree with your point, that it is just like any  
22 other witness. They can't see video of Ms. Braxton or anyone.  
23 And so just because those witnesses appeared by video, I don't  
24 believe it's appropriate for them to be able to now re-watch  
25 the video, when testimony has been already heard and closed.

1 THE COURT: I don't think there's a rule that  
2 provides for them to have the depositions generally, and it  
3 wouldn't be unless there is agreement between parties.

4 I don't know the answer to this question. I'm just  
5 telling you what I think. If you can provide some authority  
6 that says they're supposed to go back to the jury, I'll  
7 certainly consider that.

8 MR. SOLA: All right.

9 Can we have some time to look into that?

10 THE COURT: Yeah. I'm not going to send an answer  
11 back. They're still deliberating, and the instructions are  
12 that they're supposed to continue their deliberations.

13 I'll just wait if you want some time -- I don't know.  
14 Do you need 30 minutes or so?

15 MR. SOLA: Thank you, Your Honor.

16 THE COURT: Yeah. We can get back together in 30  
17 minutes.

18 In the meantime I'll look around and see if they're  
19 supposed to have the deposition exhibits. Again, I always  
20 look at depositions just like any other testimony; and other  
21 testimony does not go back to the jury. I don't give them a  
22 transcript of the trial to review all the evidence.

23 MR. JONES: And, Your Honor, depending on the  
24 resolution -- I'm not quite sure. We'd have to contact  
25 Mr. Wolf. But I'm assuming that those depo videos, redacted,

1 were put on a thumb drive that went to the Court, but I'm not  
2 certain.

3 THE CLERK: Yes.

4 THE COURT: They'd have a way to look at them?

5 THE CLERK: I have the videos, not the transcripts.

6 MR. PETERSON: And, for clarification, we object to  
7 both. But if anything -- if the Court determines anything  
8 goes back, I'd suggest just the videos. But we object to  
9 both.

10 THE COURT: So go do your stuff, go do your research.  
11 Let me find out. In the meantime, I'll hang on to the  
12 questions. Let's get together in about 30 minutes.

13 It's noon. Let's get together around 12:30 and see  
14 what you all found out.

15 MR. PETERSON: Thank you.

16 MR. SOLA: Thank you.

17 (A recess is then taken. The Court, counsel, and the  
18 parties reconvene. Attorneys Robert Sola and Kelly Jones are  
19 present for plaintiff. Attorneys Daniel Peterson and Julie  
20 Smith are present for defendant.)

21 THE COURT: Be seated.

22 We are back on the record regarding the three  
23 questions that the jury had posed, which was whether they  
24 could have access to the William J. Brady deposition, access  
25 to the William J. Brady transcript of deposition, and access

1 to the Brian Funsch deposition and/or transcript of  
2 deposition.

3 Is there anything else the plaintiff wants to tell  
4 me?

5 MR. SOLA: No, Your Honor.

6 THE COURT: Thank you.

7 Is there anything else the defense wants to tell me?

8 MR. PETERSON: Your Honor, I think there are two  
9 issues here, the first being, you know, video testimony is  
10 less desirable than live oral testimony. And we didn't find  
11 much in the way of case law, but there is an Eleventh Circuit  
12 case, *Schlange-Schoeningen*, 767 F.2d 788, where the Court  
13 there expressed some concern that allowing the video testimony  
14 to be shown to the jury would be undue weight on that  
15 deposition testimony as opposed to live testimony.

16 Of the specific requests being made of you here, I  
17 think that -- for example, the William Brady testimony, by  
18 being able to see his video but not being able to see his live  
19 testimony that came in in our case, I think that would put  
20 undue weight on the video testimony.

21 I think there is also a secondary issue that a jury  
22 exhibit needs to be offered and received prior to the close of  
23 evidence. And I think these were court exhibits is how they  
24 were presented. And I don't believe that they were offered  
25 and received as jury exhibits. So I think if we were to do

1 that now, there would be a need to reopen the record.

2 THE COURT: Thank you.

3 This is one of those matters that I believe is within  
4 the sound discretion of the Court. And from my perspective, I  
5 need to take into consideration whether or not the jury may  
6 place undue emphasis on the transcript.

7 Initially I said, "No," and I believe that  
8 was -- "no" as a response to the questions asked by the jury.  
9 And my inclination is to continue with that response.

10 I believe that there is a risk of undue weight being  
11 placed on a particular witness's testimony when, in the case  
12 of Mr. Brady, he testified live and the transcript simply  
13 isn't available to give to the jury, and they cannot see it in  
14 the same way that they saw the video testimony because he  
15 actually testified live.

16 With Mr. Funsch, it's a little bit different. But  
17 the issues that Mr. Funsch testified to were also addressed by  
18 a variety of different witnesses, and their testimony is not  
19 going to be transcribed and given to the jury.

20 Because the risk of undue weight to a particular  
21 witness's testimony, in my opinion, is real under these  
22 circumstances, I am going to respond to their requests by  
23 saying, "I will not provide those transcripts."

24 Anything else from either side?

25 MR. SOLA: No, Your Honor.



## Verdict

1 MR. PETERSON: No, Your Honor.

2 THE COURT: So that you are complete on what I am  
3 telling the jury, I say the following: "The depositions and  
4 transcripts cannot be provided."

5 Thank you.

6 MR. PETERSON: Thank you, Your Honor.

7 MR. SOLA: Thank you.

8 MR. JONES: Thank you.

9 (A recess is then taken.)

10 (The Court, counsel, the parties, and the jury  
11 reconvene.)

12 THE COURT: Good afternoon. Be seated.

13 We are continuing in the matter of Sponer versus  
14 Wells Fargo Bank. It is Case No. 17-cv-02035-HZ. The jury  
15 has reported that they have reached a verdict in this matter.

16 Ms. Flye Fairman, I see you have a piece of paper in  
17 your hand. I presume you are the presiding juror. Am I right  
18 about that?

19 JUROR NO. 7: You are correct.

20 THE COURT: And did the jury reach a verdict?

21 JUROR NO. 7: Yes, we did.

22 THE COURT: And as to each of the questions that you  
23 answered, were you unanimous?

24 JUROR NO. 7: Yes, we were.

25 THE COURT: Would you please hand the form to the

## Verdict

1 bailiff, Jennifer.

2 JUROR NO. 7: (Hanging).

3 THE CLERK: (Hanging).

4 THE COURT: The verdict reads as follows: "We, the  
5 jury, being duly impaneled and sworn to try the above-entitled  
6 case, do unanimously find as follows:

7 "Question 1: Did defendant negligently violate the  
8 Fair Credit Reporting Act?

9 "Answer: Yes.

10 "Question 2: Did defendant willfully violate the  
11 Fair Credit Reporting Act?

12 "Answer: Yes.

13 "Question 3: What are plaintiff's actual damages, if  
14 any?

15 "\$101,000.

16 "Question 4, what are the amount of punitive damages,  
17 if any?"

18 The answer is zero.

19 And I see a signature. I assume that is your  
20 signature?

21 JUROR NO. 7: Yes, it is.

22 THE COURT: I'm going to ask each of the jurors  
23 whether or not this was the jury's verdict and whether or not  
24 this reflects your vote.

25 And I'll start with you, Ms. Osterkamp. Do you agree

## Verdict

1 that the verdict as I read it was the jury's verdict?

2 JUROR NO. 1: Yes.

3 THE COURT: And did it also reflect your vote?

4 JUROR NO. 1: Yes.

5 THE COURT: Same questions, Ms. Horner. Do you agree  
6 that the verdict as I read it was the jury's verdict?

7 JUROR NO. 2: Yes.

8 THE COURT: And did it also reflect your vote?

9 JUROR NO. 2: Yes.

10 THE COURT: Ms. Huss, do you agree the verdict as I  
11 read it was the jury's verdict?

12 JUROR NO. 3: Yes.

13 THE COURT: And did it also reflect your vote?

14 JUROR NO. 3: Yes.

15 THE COURT: Mr. Rudolph, do you agree that the  
16 verdict as I read it was the jury's verdict?

17 JUROR NO. 4: Yes.

18 THE COURT: Did it also reflect your vote?

19 JUROR NO. 4: Yes.

20 THE COURT: Ms. Walrod, do you agree that the verdict  
21 as I read it was the jury's verdict?

22 JUROR NO. 5: Yes.

23 THE COURT: And did it also reflect your vote?

24 JUROR NO. 5: Yes.

25 THE COURT: And, Mr. Wiggins, do you agree that the

## Verdict

1 verdict as I read it was the jury's verdict?

2 JUROR NO. 6: Yes.

3 THE COURT: And did it also reflect your vote?

4 JUROR NO. 6: Yes.

5 THE COURT: Ms. Flye Fairman, do you agree that the  
6 verdict as I read it was the jury's verdict?

7 JUROR NO. 7: Yes.

8 THE COURT: And did it also reflect your vote?

9 JUROR NO. 7: Yes.

10 THE COURT: And, Mr. Kragt, do you agree that the  
11 verdict as I read it was the jury's verdict?

12 JUROR NO. 8: Yes.

13 THE COURT: And did it also reflect your vote?

14 JUROR NO. 8: Yes.

15 THE COURT: This verdict is a unanimous verdict.

16 Is there anything else from either of the parties,  
17 turning to plaintiff?

18 MR. SOLA: No, Your Honor.

19 THE COURT: From defense?

20 MR. PETERSON: No, Your Honor.

21 THE COURT: Then I'm going to discharge the jury.

22 Thank you very much for your service.

23 I have a few minutes. I have a hearing in about five  
24 minutes, but I'll be late. In case you have any questions of  
25 me, I will make myself available in about five minutes. And I

1 can give you about five or 10 minutes while my other matter  
2 gets ready for action, okay?

3 So go ahead and escort yourselves into the jury room.  
4 I will be there within five minutes and make myself available  
5 to you.

6 (The jury leaves the courtroom.)

7 THE COURT: Is there anything else from plaintiff's  
8 perspective I need to address?

9 MR. SOLA: No, Your Honor.

10 THE COURT: Please prepare a verdict -- or, excuse  
11 me, a judgment that is consistent with this verdict.

12 MR. SOLA: Yes.

13 THE COURT: Thank you.

14 Anything else from defense perspective?

15 MR. PETERSON: No, Your Honor.

16 THE COURT: All right.

17 Thank you very much for all of your work in this  
18 matter.

19 We are in recess.

20 MS. SMITH: Thank you.

21

22

23 (Proceedings concluded.)

24

25

--oOo--

I certify, by signing below, that the foregoing is a correct transcript of the record of proceedings in the above-titled cause. A transcript without an original signature, conformed signature or digitally signed signature is not certified.

*/s/ Nancy M. Walker*

*10-16-19*

\_\_\_\_\_  
NANCY M. WALKER, CSR, RMR, CRR  
Official Court Reporter  
Oregon CSR No. 90-0091

\_\_\_\_\_  
DATE

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